IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO. 514 OF 2001

IN

SUMMARY SUIT NO. 688 OF 2001

Mukul H. Ghia and anr. .....**Plffs.**
vs.
Kamalnayan H. Javeri and ors. .....**Defnds.**

Mr.Bharat Vaishnawa, advocate
for the plaintiffs.
Mr.Ketan Parekh a/w.s Ms. Mirasee i/b, Shah and Sanghavi for defendant no.1.
Mr. K.C. Nichani a/w. R.D. Dhanuka i/b. Anita Dhanuka for defendant no.2.
Mr.N.P. Shah i/b. M/s. Little and Co.
for defendant no.3.

CORAM: S.U. KAMDAR, J.

DATE : 9th September, 2005.

P.C. :.

1. The present motion has been initiated by the plaintiffs who are the claiming to be the daughters of Jineshwaridevi H. Javeri. The defendant no.1,2 and 3 are the sons of the said deceased. The deceased expired on 11.2.2000. The plaintiffs further case is that various properties which are described in Ex.A and B belonged originally to Shri. Hasmukhlal M. Javeri the father of the plaintiff and the defendant who died intestate on 7.3.1987. There are various properties which are described in Ex.A inrespect of which various orders are sought. In my opinion since the plaintiffs are entitled to the share in the deceased estate of Hasmukhlal Javeri the properties which are mentioned in Ex.H to the plaintiff are required to be protected.

2. In so far as the two residential flats being Flat no. 1404 and 1405 on the 14th Floor,

Chandanbala Apartments of Chandanbala Co-op Hsg. Soc Ltd, is concerned the defendant no.1 states that defendant no.2 is in possession from last many years and at the interim stage the said possession ought not to be disturbed. Learned counsel for the defendant no.3 states that Flat no.1404 stands in his name and that he is the actual owner of the said flat and thus he is entitled to the same. Subject to the rights of the defendant no.3 to initiate appropriate legal proceedings for exercising his claim the defendant no.2 will continue to use, occupy and have possession of the said flat subject to his filing a written undertaking to this court that he will not alienate, encumber or create any third party rights and that he will pay all outgoings and maintenance charges and maintain the said flat in a habitable condition. Learned counsel for the plaintiff further contends that the receiver should be appointed of the said flat. In my opinion looking at the situation that the flats are in possession

of the defendant no.2 from last many years it is not possible at this stage to appoint court Receiver inrespect of the said flat premises.

3. In so far as Flat no.6 at Loyalka Apartments, of Loyalka Co-operative Hsg. Soc, Chowpaty Band Stand is concerned the same is already in possession of the second defendant and the defendant no.2 is running his office therefrom. The said flat is originally in the name of the father and even today it stands in the name of the father. The defendant no.2 is permitted to use the said premises also on the similar undertaking as inrespect of the said two flats as aforestated.

4. In so far as Item no.4 of the Ex. A is concerned learned counsel appearing for the plaintiff does not press for any reliefs inrespect thereof because the same is a partnership firm

being M/s. Bombay Processors, of the defendant no.3 and the wife of the 2nd defendant and father and mother were never the partners therein.

5. In so far as mother's shareholding in Item no.5 of the Ex. A being a private limited company, namely Gujarat Ferro Alloys Pvt. Ltd is concerned, I appoint Court Receiver, High Court to take custody of the said shares. I direct him to retain the amount of dividend if any and exercise all rights as may be available to him as a shareholder for and on behalf of the estate of the said deceased.

6. In so far as Item no.7 is concerted namely a farm land known as Wadi, admeasuring approximately about 27 acres situated at National Highway no.8, Damdachi, Village- Balsar, Gujarat is concerned, the said property according to the 2nd defendant is

leased out to a company known as National Ferro Alloys and they are the lessee thereof. I appoint Court Receiver inrespect of the said farm land covered by Item no. 7 of Ex.A. The Court Receiver will put the said lessee in possession as an agent of the Court Receiver subject to the usual terms and conditions without security. I have appointed the Court Receiver because the said land is used by the Company for commercial purposes and thus the company should pay for its user of the said land to the Court Receiver.

7. In so far as Item no. 8 and 9 is concerned learned counsel appearing for the 2nd defendant states that the same are already been surrendered long time back and that the assets are not available. In view thereof no orders are passed.

8. In so far as Item no.10 is concerned being the jewellery I have already passed separate orders in the present proceedings.

9. Notice of Motion disposed off accordingly interms of the aforesaid order. No order as to costs.

sd/-

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